



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

FROM:

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SUBJECT:

Jurisdictional Limitation Restricts IRS Forfeiture of SUA
Proceeds under 18 U.S.C. § 981(a)(1)(C)

This memorandum responds to your request for advice regarding whether Criminal Investigation (CI) has authority to forfeit property under 18 U.S.C. § 981(a)(1)(C). As amended by CAFRA,¹ this provision provides that all proceeds of specified unlawful activity (SUA)² are subject to civil forfeiture solely because of their character as SUA proceeds. Recognizing that IRS forfeitures under 18 U.S.C. § 981 have always been predicated on the authority under § 981(a)(1)(A) (which requires proof that SUA proceeds were involved in or traceable to a money laundering transaction), there have been recurring questions as to whether CI can rely on the authority under § 981(a)(1)(C) to forfeit SUA proceeds, thereby eliminating the need to trace them to a money laundering transaction.

The fact that SUA proceeds are subject to forfeiture by their mere existence does not equate to a jurisdictional ability to forfeit them. As discussed below, CI's forfeiture authority under § 981 is dependant upon the commission of an offense within its investigative jurisdiction, i.e., money laundering offenses. Because CI does not have independent jurisdiction over any other SUAs for which forfeiture is authorized under § 981, CI's forfeiture authority under § 981 only extends to property involved in or traceable to a money laundering violation. Consequently, the forfeiture provisions

¹ The Civil Asset Forfeiture Reform Act of 2000 (CAFRA), P.L. 106-185, made numerous changes to federal forfeiture laws, including amending 18 U.S.C. § 981(a)(1)(C). The amendment to section 981(a)(1)(C) vastly expanded the scope of this provision to reach criminal proceeds generated from "any offense constituting specified unlawful activity, or a conspiracy to commit such offense," rather than the few criminal violations formerly encompassed by the provision (i.e, bank fraud, counterfeiting, smuggling, arson and credit card fraud).

² This term is used in reference to the money laundering statutes and is defined in 18 U.S.C. §§ 1956(c)(7) and 1957(f)(3).

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under § 981(a)(1)(C) are unavailing to CI because a property's nexus to a money laundering transaction must always be proven to establish CI's jurisdictional ability to forfeit the property under § 981.

Discussion

Statutory Grant of Forfeiture Authority Under 18 U.S.C. § 981

The authority to seize and forfeit property under 18 U.S.C. § 981 is statutorily vested in three executive offices – the Attorney General, the Secretary of the Treasury and the Postal Service.³ Whereas the Attorney General is granted plenary authority to seize and forfeit property made subject to forfeiture under any provision of § 981, the authority of the Secretary and the Postal Service are expressly limited to property involved in a violation within their respective investigative jurisdictions. *Id.* Accordingly, the Secretary's ability to forfeit depends on the predicate offense (i.e., the offense giving rise to the forfeiture must be an offense within the investigative jurisdiction of the Secretary). This limitation is inherent in any delegation of § 981 seizure and forfeiture authority by the Secretary.

Section 981 specifies a myriad of predicate offences for which forfeiture is authorized.⁴ The predicate offenses listed in § 981 for which the Secretary has investigative jurisdiction include money laundering violations, counterfeiting and forgery violations, certain banking and customs violations, and alcohol, tobacco and firearms violations. Tax offenses and Bank Secrecy Act offenses (for which the Secretary has investigative jurisdiction) are not among the predicate offenses listed in § 981, but the Secretary has independent statutory authority to forfeit property relative to those offenses.⁵

Statutory Grant of Money Laundering Jurisdiction

As required under the money laundering statutes, investigative jurisdiction over 18 U.S.C. §§ 1956 and 1957 violations is shared among the Attorney General, the Secretary and the Postal Service in accordance with an agreement (MOU) governing the exercise of investigatory authority.⁶ Under the terms of the MOU,⁷ investigatory

³ See 18 U.S.C. § 981(b)(1).

⁴ See 18 U.S.C. § 981(a)(1)(A)-(H)

⁵ See 26 U.S.C. §§ 7301 and 7302 regarding property subject to forfeiture for certain violations of the internal revenue laws and 31 U.S.C. § 5317(c) regarding property subject to forfeiture for certain violations of the Bank Secrecy Act.

⁶ Specifically, 18 U.S.C. §§ 1956(e) and 1957(e) identically provide:

authority is allocated in accordance with existing investigative jurisdictions, independent of the money laundering statutes.⁸ Within the Department of the Treasury, jurisdiction to investigate money laundering violations was apportioned among the Treasury bureaus by the Secretary in accordance with each bureau's existing investigative jurisdiction. Thus, for example, the MOU specifies the Internal Revenue Service has authority to investigate money laundering violations of 18 U.S.C. §§ 1956 and 1957 "where the underlying conduct is subject to investigation under Title 26 or the Bank Secrecy Act." Additionally, in recognition of the related forfeiture provisions specifically under 18 U.S.C. § 981(a)(1)(A), the MOU provides Treasury bureaus may seize and forfeit property under 18 U.S.C. § 981(a)(1)(A) to the extent of their respective investigative jurisdictions set forth in the MOU.⁹

Delegation of Section 981 Forfeiture Authority to CI

Based on the jurisdictional parameters established in the MOU, the Secretary made corresponding delegations of investigative authority over money laundering violations and related seizure and forfeiture authority under 18 U.S.C. § 981(a)(1)(A) to the respective Treasury bureaus. Treasury Directive 15-42 (January 21, 2002) is the delegation to the Commissioner, Internal Revenue Service¹⁰ and tracks the language of

Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury and the Secretary of the Treasury may direct, as appropriate Such authority of the Secretary of the Treasury and Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service and the Attorney General.

⁷ The MOU became effective in 1990 and is still effective today, notwithstanding the fact that the IRS is the only remaining law enforcement bureau within Treasury following the creation of the Department of Homeland Security.

⁸ See MOU, Section III. Investigatory Jurisdiction.

⁹ See MOU, Section V. Seizure and Forfeiture.

¹⁰ Treasury Directive 15-42 provides that pursuant to the authority vested in the Secretary by 18 U.S.C. §§ 981, 1956(e), 1957(e) and the and the authority delegated to the Under Secretary (Enforcement) by Treasury Order 101-05, the Commissioner has been delegated:

- investigatory authority over money laundering violations of 18 U.S.C. §§ 1956 and 1957 where the underlying conduct is subject to investigation under Title 26 or the Bank Secrecy Act, as amended; or 31 U.S.C.

the MOU. Accordingly, the delegation of authority to the IRS appropriately limits the Service's authority to seize and forfeit property under § 981 to property involved in or traceable to a money laundering.¹¹

Other than the MOU and Treasury Directive, there has been no grant of investigatory jurisdiction to the IRS for any of the other SUAs for which forfeiture of property is authorized under 18 U.S.C. § 981. Thus, the only predicate offenses listed in § 981 for which the IRS has investigative jurisdiction are money laundering violations of 18 U.S.C. §§ 1956 and 1957. As mentioned above, tax offenses and Bank Secrecy Act offenses are not among the predicate offenses listed in § 981. Thus, the IRS does not have any independent statutory authority in which to exercise forfeiture authority pursuant to § 981.

Conclusion

The limitation of forfeiture authority to jurisdictional boundaries is expressly mandated by the statutory grants of forfeiture authority and money laundering authority. Because CI does not have independent jurisdiction over any SUA, CI's forfeiture authority under § 981 only extends to property involved in or traceable to a money laundering violation. Accordingly, all § 981 forfeitures initiated by the Service should be predicated on and traceable to a specific money laundering violation to permit forfeiture under § 981(a)(1)(A). Therefore, it is our opinion the Service should not attempt to pursue administrative or judicial forfeitures of SUA proceeds under 981(a)(1)(C) which cannot be traced to specific money laundering violations. Any such property should be turned over to the law enforcement agency with investigative jurisdiction over the underlying SUA.

If you have any questions concerning this memorandum, please contact Brian Townsend on 622-7740.

§§ 5311 et seq (other than violations of 31 U.S.C. 5316 [CMIR violations]).

- seizure and forfeiture authority over violations of 18 U.S.C. § 981 and 31 U.S.C. § 5317 relating to violations of 31 U.S.C. §§ 5313 and 5324; and 18 U.S.C. §§ 1956 and 1957 which are within the investigatory jurisdiction of the IRS.
- remission and mitigation authority over forfeitures of property valued at not more than \$500,000 seized under this directive.

¹¹ It is recognized that most money laundering violations of 18 U.S.C. §§ 1956 and 1957 involve facts that are subject to investigation under Title 26 or the Bank Secrecy Act.